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IN THE MATTER OF THE WORKMEN'S COMPENSATION ACT

S U B M I S S I O N

of

THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED

to

THE HONOURABLE MR. JUSTICE G.A. MCGILLIVRAY

Commissioner under

THE PUBLIC INQUIRIES ACT

September 23, 1966

IN THE MATTER OF THE WORKMEN'S COMPENSATION ACT

TO The Honourable Mr. Justice G. A. McGillivray
as Commissioner under The Public Inquiries Act

Sir:

The International Nickel Company of Canada, Limited appreciates the opportunity to present the following submissions and suggestions to you in your capacity as Commissioner appointed under The Public Inquiries Act to enquire into and report upon and make recommendations concerning The Workmen's Compensation Act upon subjects other than detailed administration. The Company hopes that these submissions and suggestions may be of some assistance to you.

This Company and its predecessors have closely followed the operation of The Workmen's Compensation Act since its original enactment in 1914 and have carefully observed the effects of the various amendments which have been made to the Act from time to time.

In preparing these submissions and suggestions, the Company has given particular consideration to the reports of earlier Commissioners, namely, those of the late The Honourable Sir William Meredith in 1912 and 1913, the late The Honourable Mr. Justice Middleton in 1932, and The Honourable Mr. Justice Roach in 1950.

The Company believes that this legislation has been of inestimable value to both employees and employers in the Province, and the success which it has enjoyed and the

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confidence which it has inspired is largely due to the care and clear thinking which went into the design and substance of the original legislation. There can be no doubt that the legislation imposed upon the Board great responsibility in carrying out its duties. The Board had and has wide discretion. Those who, as members of the Board, have so adequately shouldered this responsibility and have so fairly exercised their discretion, have earned the co-operation, respect and thanks of all. This Company at this time wishes to express its appreciation and thanks to all who have had a part in the administration of the Act.

The objects of the original legislation are quite clear if reference is made to the interim and final report of the late The Honourable Sir William Meredith in the years 1912 and 1913.

These reports were made after most careful and exhaustive enquiry. They found in effect that the law of Ontario, as it then existed, was entirely inadequate to meet the conditions under which industries were then carried on or to provide just compensation for those employed in them who met with injuries or suffered from occupational diseases contracted in the course of their employment. The objects were, therefore, twofold: (1) to modify the law as it then existed so that it would be adequate to meet the conditions under which industry was being carried on, and (2) to provide just compensation for those employed in

industry who met with injuries or suffered from occupational diseases contracted in the course of their employment.

As the law then stood, an employee who met with such injuries or suffered from occupational diseases could only recover compensation after proving negligence on the part of his employer. Even should he prove such negligence, he still could not recover if he had been guilty of contributory negligence or if "the assumption of risk rule" or the "doctrine of common employment" were successfully invoked against him. Even though such an employee were successful in recovering judgment for such compensation, the employer might be unable to pay the sum awarded. This whole situation was felt to be inequitable to the employee.

The employer on the other hand was running an ever-increasing risk, particularly if a small employer, of being ruined financially by having to pay compensation in the form of damages for the death or permanent disablement of an employee. The procedure for determining his liability was slow and expensive and in many cases the compensation finally determined to be payable to the employee was but a small fraction of the cost to the employers. In these circumstances it was felt that some form of insurance was necessary from the employer's point of view.

The recommendations of the Commissioner included, in effect:

- (1) That the contribution which the employee would make to the scheme would be,

- (a) the loss of all his wages for seven days if his disability did not last longer than that,
- (b) his outlay for medical or surgical treatment, nursing and other necessities,
- (c) the loss of 45% of his wages while his disability lasted, and
- (d) the surrender of his right to damages under the common law or under the Workmen's Compensation for Injuries Act.

(2) That the contribution which the employer would make to the scheme would be,

- (a) an amount equal to 55% of the employee's earnings up to \$2,000 per year of the life of the employee in the case of total permanent disability, and a proportionately lesser amount for partial permanent disability, and where the disability was not permanent an amount equal to 55% of the employee's earnings up to \$2,000 per year for the duration of the disability in the case of total temporary disability and a proportionately lesser amount for partial temporary disability;
- (b) that should the accident result in the death of the employee, the employer would pay an amount sufficient to provide burial expenses up to a maximum of \$75 and monthly payments to the employee's dependents not exceeding \$40 per month;
- (c) that the employer would pay such compensation in cases involving the death or serious injury of the employee even though the injury was attributable solely to the serious and wilful misconduct of the employee; and
- (d) that the employer would pay such compensation even though the employee's right to recover damages would have been barred by "the assumption of risk rule", "the doctrine of common employment" or by contributory negligence on the part of the employee.

(3) That in the industries mentioned in Schedule 1 the employer, particularly the small employer, would be protected from the impact of having to meet, as an individual, the cost of compensation for the death or permanent disablement of an employee, by a scheme of mutual insurance whereby such cost would be charged to all employers in the class in which the injured employee was employed.

(4) That in the interest of security of payment of periodic compensation to the injured employee and so that employers in any class should not be unduly or unfairly burdened in future years with payments which were to be made in those years in respect of accidents which had previously happened, an annual assessment would be made in each class of industry mentioned in Schedule 1 to meet all compensation payable in the current year in that class and all compensation payable in future years in respect of accidents happening in that year in that class.

These recommendations were embodied in the legislation of 1914 and constituted the general scheme of that legislation.

It is also clear that the fundamental principle of the legislation was personal injury through accident which included certain occupational diseases directly related to employment. The Act was not to be of a purely social nature compensating workmen who for any reason and at any time might

be incapacitated and unable to work. There had to be a direct relation to the employment, not just the fact that the workman was employed. This principle was clearly pointed out by Mr. Justice Middleton in his report when he stated:

"The Workmen's Compensation Act must not be permitted to become health insurance or a system of old age pensions".

Mr. Justice Roach in his report also affirmed this principle when he stated:

"This Act should be considered for what it is and was originally intended to be namely a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another."

This Company believes that the general scheme of the legislation of 1914 was sound. It has, however, the following comments and suggestions to make with respect to The Workmen's Compensation Act as it exists to-day and with respect to certain trends which have become apparent in the amendments and proposed amendments which have been enacted or proposed from time to time.

1. Increase in Compensation for Past Years

The basic scheme of the legislation of 1914 includes the principle that employers in any class should not be unduly or unfairly burdened in future years with payments which are

to be made in those years in respect of accidents which have previously happened. While this principle is clearly recognized in sections 84, 98 and 106 of the present Act, amendments have been introduced which deviate from this basic principle. The first amendment is contained in the amending Act of 1920 which in effect increased the amount of compensation payable in cases of injury resulting in death whether or not the accident happened before or after the effective date of the Act and also introduced the forerunner of the present section 35 thereby departing from the above basic principle. Subsequent amendments including particularly the amending Act of 1965 have also constituted clear departures from this principle.

The effects of such deviations from principle can be most detrimental to a present-day industry at any given time. Industries of short duration can contribute heavily to the total number of accidents and leave large payments to be collected from the continuing industries should further increases for payments for past accidents be put into effect. The gravity of the impact of such increases was clearly recognized in the distribution of the assessment, which resulted from the increase provided by the amending Act of 1948, over the years 1948, 1949 and 1950, and again in the distribution over ten years of the assessment which resulted from the increase provided by the amending Act of 1965.

This Company believes that amendments to the Act which have the effect of casting upon industries to-day a substantial share of the financial burden resulting from past years are unsound and unfair. They can result only in a steady increase in the financial burden of industry in this Province to the detriment of that industry in its efforts to compete, particularly in markets outside of Ontario.

The main argument put forward by proponents for increasing the compensation for accidents which have occurred in past years is that living conditions have changed, and a compensation which was fair and proper when settlement was made is no longer adequate to meet the changed living conditions. This situation is one which has to be faced by all persons who for any reason have been placed in the position of having to live on an income fixed in past years. It is not the result of the original injury or circumstances which placed them in that position. It is the result of the depreciation in the value of our currency and the consequent increase in our cost of living. The increase in our cost of living is the responsibility of the economy as a whole and not that of industry alone.

This particular subject was considered by both the late Mr. Justice Middleton and Mr. Justice Roach in their reports. The former pointed out that the increase with reference to accidents that had already happened was a complete departure from the scheme of the Act. The latter,

dealing specifically with section 35(3) of the 1948 amendment which is substantially the same as section 12 of the amending Act of 1920, stated:

"In my very respectful opinion, however, it was error to provide that the additional moneys necessary to provide for the increases in respect of past accidents should be levied and collected from the employers. Such a provision was entirely contrary to the scheme of the Act and violated one of its fundamental principles."

Later, in giving particular consideration to section 33(1) of the Act, now section 35(1), he states:

"For the reasons which I earlier stated, to levy and collect [the increases] from the employers is neither more nor less in accordance with the general principles and provisions of the Act. It is in direct violation of those principles."

Finally Mr. Justice Roach recommended that the then section 33 should be deleted from the Act and that a provision be inserted whereby such increases be paid by the Government to the Board out of the Consolidated Revenue Fund. It is submitted that the findings of these two Commissioners are still correct and that the recommendation of Mr. Justice Roach should be followed so that the original basic principles are maintained and the burden of paying for any such increases falls on the population at large and not on industry alone.

2. Limits on Compensation Payable

When The Workmen's Compensation Act first came into force in 1915 the maximum compensation which an employee

could receive in the event of an accident involving total disability was 55% of his annual earnings up to \$2,000. This limitation was in effect part of his contribution to the scheme of the Act in that it limits the liability of his employer. The employee's contribution in this respect has been constantly reduced however by various amendments to the Act. By the amending Act of 1920 the maximum compensation which an injured employee could receive was increased to 66 $\frac{2}{3}$ % of his annual earnings up to \$2,000 and by the amending Act of 1949 the percentage was increased to the present 75%.

The limit of earnings has also been progressively increased to the present figure of \$6,000 which was established by the amending Act of 1963. Each of these increases in limits represented a reduction in the contribution which the employee was making in accordance with the scheme of the Act and at the same time represented an increase in the contribution which the employer was making. Not only in this respect has the relative contribution of employer and employee been changed. Originally the employee was required to contribute his outlay for medical or surgical treatment, nursing and other necessities. By the amendments of 1917 the cost of medical aid was imposed upon the employer and further extensions of medical aid have been from time to time provided for and always at the expense of the employer.

This Company does not take exception to the progressive increases from the original \$2,000 to the present \$6,000 in the limits of earnings considered in the calculation of compensation. These increases have to some extent followed the increase in wages paid and on that ground may be said to be justified, but the Company submits that there is no justification for any further increase beyond the \$6,000 at this time.

The Company believes, however, that to the extent the amending legislation has increased the percentage applied to maximum earnings in calculating compensation beyond 66 2/3% it has run counter to the basic principles underlying The Workmen's Compensation Act and was neither justified nor sound. Inasmuch as these increases have substantially and in some cases virtually removed the employee's contribution and added to the contribution of industry, there is a very substantial departure from the original scheme of the Act.

The accident fund for industries in Schedule 1 is essentially of the insurance type and is set up and administered as such. It is a cardinal rule in disability insurance that for the protection of the fund a policy should be limited to pay to the disabled individual substantially less than he would normally earn were he not disabled. Industry should be entitled to the same protection in regard to its contributions which establish and maintain the accident fund.

The present cessation of deductions for income tax and unemployment insurance, and in the case of this Company and undoubtedly many others the payment by the Company of insurance premiums and Ontario Hospital premiums while a man is receiving compensation for temporary total disability, must be considered. Take for example the case of a single man employed by this Company earning \$100 per week who, as a result of an accident, receives compensation for temporary total disability. His income during his disablement amounts to \$75 per week and the whole amount is received by him without deduction. If the same man were working, he would earn \$100 per week but after deductions of \$14.10 for income tax, 94¢ for unemployment insurance, 40½¢ for Ontario Hospitalization, 39¢ for PSI, 71¢ for life insurance, 96¢ for sickness and accident insurance, \$1.59 for Canada pension plan, \$1.25 for union dues and an estimated minimum of \$2.50 for transportation, the amount received by him would be \$77.16. This means that in some cases an employee can receive almost as much money through compensation for temporary total disability than would be received while working. Naturally if the percentage were raised a complete distortion could occur. Even setting aside various amounts which might be said to have particular application to this Company, such as PSI, life insurance, sickness and accident insurance, the amount received by the employee while working would still be little above the amount which he would receive through compensation for temporary total disability.

While this Company has noted that Mr. Justice Roach in his report concluded that an illustration such as above did not have any bearing on the question, it is suggested that he based his conclusion on the decisions of the courts in England and Ontario as referred to by him in his report. We believe the views expressed in these cases are no longer applicable in the light of those of the more recent cases, such as British Transport Commission v. Gourley (1956) A. C. 185 (which overruled the Jordan v. Limmer & Trinidad Lake Asphalt Co. Ltd. case) and which was followed in Ontario by Walker v. Copp Clark Publishing Co. Ltd. (1962) 33 D.L.R. (2d) 338. Accordingly this Company believes that the above illustration does in fact have bearing on the question, and it is submitted that the present percentage applied to gross earnings without consideration being given to expenses which are incurred by an employee during the course of his normal employment and which are not incurred during the period of his disability is already too high.

Where employees suffer little financial loss or may even stand to gain financially as a result of an accident, not only malingering is encouraged but the most important matter of rehabilitation may be retarded.

3. Waiting Period

The waiting period was one of the original contributions which employees were to make to the scheme of the Act.

Their other contributions have been materially reduced while the contributions of employers have materially increased.

This Company believes that the three-day period for which a disability must persist before compensation is payable should not be reduced and that the reference in section 3(1)(a) of the Act should be to "working" days, not "calendar" days. The present reference to calendar days is completely unrealistic in view of the shorter work week and the many work schedules which provide for more than two consecutive days off.

Under present conditions the employee's contribution under the waiting period has been drastically reduced with, it is suggested, a proportionately greater increase in the contribution by employers. In addition an element of inequity exists between individual employees having regard to the different time that an accident may take place in relation to the normal days off from work.

It is of interest in connection with the matter of the waiting period to consider the report of The Honourable Mr. Justice Tysoe of the Court of Appeal of British Columbia upon The Workmen's Compensation Act of that Province in 1965 where, in connection with a request that the waiting period should be eliminated, he states at page 199 of his report:

"In my opinion it must be clearly shown that its existence works an injustice on workmen, and that its exclusion will not work an injustice on industry. That has not been demonstrated to me."

4. Constitution of the Board

At this point this Company wishes to compliment the various Boards over the years for the able manner in which the Act has been administered. From time to time both industry and labour have had what might be called direct representation on the Board although not necessarily at the same time.

If members of the Board are to be representative then both industry and labour should be represented equally and certainly not one to the exclusion of the other. It is submitted that it is of primary importance that any possible ground for thought of prejudice or bias should be eliminated.

Where the Board is established with representation from industry and labour, then it is submitted that the Chairman should be representative of neither industry nor labour and preferably should have legal qualifications. However, provisions of the Act relating to the Board, namely, sections 54 and subsequent, would require amendment to provide, amongst other things, the presence of three members to constitute a quorum and for flexibility, alternate members at least for those members representative of industry and labour. Inasmuch as it is undoubtedly invaluable to the Board to have the assistance of a medical doctor, it is also suggested that provisions be made for a medical doctor as a non-voting member or alternatively as a special advisor who would be available during any hearings or deliberations of the Board.

5. Claims Review Procedures

This Company agrees that an employee should have the right to have his case reviewed through definitely established procedures, and it takes no exception to the sequence of inquiries that has been developed by the Board.

While it is appreciated that at times the interests of the employee and employer may be diverse, it is also realized that the purpose of such procedures is to provide machinery to enable the Board to arrive at a just decision. This Company considers that such inquiries should be conducted in a manner that will set forth all the facts but still avoid to the greatest extent possible prejudice or embarrassment to either party. Certainly from the employer's point of view he is inevitably placed in a prejudicial and embarrassing position at any time that he appears as an adversary of one of his employees.

This Company submits that just decisions could be reached but that at the same time such embarrassment and prejudice could be avoided to a substantial degree if the examination of witnesses at claims review procedures, including hearings before the Board, were conducted by a solicitor who is an employee of the Board. Provision should be made for the employer and the employee or their representatives to refer questions pertinent to the case to the solicitor to put to witnesses and as is presently the case, to make oral or written submissions in respect of the evidence adduced at the conclusion or immediately following the hearing.

The relationship between a doctor and a patient is personal and in many cases is confidential. It appears rather unfair to a practising physician to place him on the witness stand in any proceeding and require him to give sworn testimony in the presence of any individuals other than members and officers of the Board. The Company strongly urges that a doctor be permitted to give evidence in the presence of members and officers of the Board alone if he so requests.

6. Accident Reports

Section 115 places severe obligations on the employer with respect to reporting accidents. To this the Company takes no exception and it agrees that the Act should not provide as rigid obligations with respect to the reporting of an accident by the workman. The Company does consider, however, that the latitude afforded to the employee under sections 21(1) and 21(5) is too broad.

Where the definition of "accident" as contained in section 1(1)(a)(iii) is strictly applied to the wording of section 21(1) it becomes apparent that notice in the case of disablement arising out of and in course of employment is only required to be given upon the disablement. In case of disablement, particularly back disabilities, the whole basis for a claim depends upon an event or occurrence which may well be of a minor nature, unreported and unknown to the

employer and which happened some time prior to the disablement. In all cases depending upon such prior unknown events employers encounter insurmountable difficulties in their efforts to obtain or provide specific, accurate and reliable information and are severely prejudiced.

It is submitted by the Company that in cases of disablement notice must relate to the occurrence of the event from which it is alleged the disablement arose and that the latitude provided by section 21 should be restricted only to excuse failure in giving notice where physical incapacity to do so exists and in the case of error or omission where there can be no doubt as to the knowledge of the employer of the accident or event at the time of its occurrence.

Where the scale of compensation is such that there is little or no financial disadvantage in being in receipt of compensation the opportunity for abuse is far too great.

In addition this Company submits that in subsection (5) of section 21 the question of whether or not an employer is prejudiced should be a question of fact rather than a matter of opinion of the Board. Also in the case of compensation payable out of the accident fund the claim should only be allowed if neither the Board nor the employer are prejudiced and the Board is of the opinion that such special circumstances existed that the interests of justice require that the claim be allowed. It should be noted in this connection that the latter

employer and which happened some time prior to the disablement. In all cases depending upon such prior unknown events employers encounter insurmountable difficulties in their efforts to obtain or provide specific, accurate and reliable information and are severely prejudiced.

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Where the scale of compensation is such that there is little or no financial disadvantage in being in receipt of compensation the opportunity for abuse is far too great. In addition this Company submits that in subsection (2) of section 21 the question of whether or not an employer

is prejudiced should be a question of fact rather than a matter of opinion of the Board. Also in the case of compensation payable out of the accident fund the claim should only be allowed if neither the Board nor the employer are prejudiced and the Board is of the opinion that such special circumstances existed that the interests of justice require that the claim be allowed. It should be noted in this connection that the latter

suggestion is substantially that recommended by Mr. Justice Tysoe in his report dealing with section 49 of The Workmen's Compensation Act of British Columbia.

7. Initial Choice of Doctor

In circular "G", "Claims Information for Workmen and Employers", published by the Board and dated February 1964 the following statement appears on page 6: "The Board gives the injured workman, coming under the Act, the initial choice of doctor, but he may not, without permission or approval of the Board, change doctors, leave Ontario or transfer to a distance for treatment." A somewhat similar reference appears on the inside cover of the First Aid Regulations published by the Board.

Section 51 subsection 12 of the Act reads in part: "Every employer shall at his own expense furnish to any workman injured in his employment, who is in need of it, immediate conveyance and transportation to a hospital, or to a physician, or to the workman's home,".

It is this Company's understanding that the reference in the above circular and Regulations to initial choice of doctor is intended to refer to continuing treatment rather than immediate medical attention following the accident.

Due to modern living and working habits and the availability of modern transportation, employees often live and seek domestic medical attention at great distances from their places of employment.

Misunderstanding has arisen in the interpretation of the statements in circular "G" and the First Aid Regulations which has led employees to believe that they not only have the right to choose a doctor at or near their homes for continuing treatment but to request that immediate medical attention following the accident be given by him.

It is this Company's submission that any possible misunderstanding be resolved by clearly indicating that the employer is not obligated to transport the injured employee beyond the closest qualified medical or surgical facilities.

8. Rehabilitation of Injured Employee

This Company considers that rehabilitation is humane and correct and it makes every endeavour to rehabilitate a workman who meets with sickness or injury whether it be industrial or non-industrial. This Company fully appreciates the good work done by the Board in its rehabilitation program.

Through the co-operation of the Board with many industries and with its advice and working closely in conjunction with the medical authorities of the Board and with private practitioners in the location of the industry, approved rehabilitation procedures have been established in many industries and this Company actively participates in such a procedure.

It has been the experience of this Company that injured employees who actively co-operate in rehabilitation

procedures generally progress more satisfactorily and rapidly toward recovery. Those who do not co-operate or even actively resist rehabilitation seriously retard recovery. Apart from the general undesirability of delayed recovery, it has a direct consequence on the burden borne by industry. As pointed out in an earlier section of these submissions, an injured employee on temporary total disability compensation may be receiving an amount almost as much as his net earnings prior to the injury. In the case of an injured employee on temporary partial disability who is being placed at work, there is also little if any loss in net earnings. Such a situation actively encourages malingering and resistance to rehabilitation for human nature cannot be ignored.

For the above reasons this Company submits that where such approved rehabilitation procedures have been established and it is determined that a man refuses to co-operate in his rehabilitation, his compensation for temporary total disability or temporary partial disability, as the case may be, should be terminated or reduced and in no event should an award of permanent partial disability be made.

In many instances temporary total disability is of relatively short duration and lack of co-operation in rehabilitation is inclined to be very prevalent in this type of case. While a procedure is available under sections 22 and 23 for determination of the condition of a workman, it is generally too lengthy for such cases and it is suggested

that a provision should be included that upon the request of the employer an immediate determination is to be made by a medical referee of the injured employee's ability to return to work to a job available in accordance with the approved rehabilitation procedure.

9. Definition of Accident

During the period between 1951 and 1965 the physical effort required on a large proportion of jobs has substantially lessened due to technological improvements. However, rather than showing a decrease, the number of "back case" claims has increased to an alarming degree particularly in the latter years of the period. During the year 1951 this Company had 43 approved claims relating to the back when it had an average working force of 14,795 men. To date for the year 1965 this Company has had 556 approved claims when the average working force was 16,438 men.

For the year 1951 \$9,488 was paid out for the 43 approved claims. To date \$170,231 has been paid out for the 556 approved claims and this amount will undoubtedly increase as the still pending claims for that year are settled. The increase in this type of case and in the costs must be viewed with the greatest concern.

It must be noted that a back disability can and often does occur in the course of performing the simplest physical movement, such as sitting down, standing up or bending over, and without the presence of any prior injury. In the absence of any

sickness and non-occupational accident insurance a back disability which is related to a sprain or strain suffered away from work results in no compensation, while if it can be related to one suffered at work compensation will probably be received.

Disabilities of the back which result from a specific occurrence at work, such as a blow or severe fall, properly fall within the scheme and intent of the Act and industry does not hesitate to accept full responsibility for such injuries. However, disabilities of the back which stem from obscure and ill-defined origins, such as sprains or strains, which are unnoticed or ignored at the time of occurrence but recalled later or whose occurrence cannot in truth be distinguished from others which are experienced from time to time by most people in any form of activity, do not it is submitted fall properly within the scheme of the Act.

While it has been accepted that an individual's physical peculiarity or sensitivity does not prevent receipt of compensation because he is injured by a condition existing at work which is harmless to others, such as is illustrated in the case of Dotzaner v. Strand Palace Hotel Ltd. (1910) 3 Burroughs Workmen's Compensation Cases, page 387, it is submitted that back disabilities said to arise from more or less indeterminable origin do not come within that principle. Whereas generally in that type of case the injury

can be determined beyond any doubt to be caused by a particular event or circumstance at the place of work, in a great many back disability cases there can be no such determination. Further it must also be noted that there may be no physical peculiarity of the employee in the case of back disability and even should there be some latent defect, malformation or degeneration of the back, the onset of disability does not necessarily arise from the work or any event occurring at or condition of work. A back disability can "come on" in such cases at any time with or without particular activity, much as is the case in all manner of disease. In fact there is a similarity between this type of back disability and disease. In both cases, neither the employment nor the work (excluding of course industrial diseases as set forth in Schedule 3 to the Act) can properly be said to have any true bearing on the onset of the disability.

The enlargement of the definition of "accident" by the amending Act of 1963 has resulted in the application of compensation to cases of disablement arising from causes which hardly can be said to have direct connection with work or employment. The legislation thus becomes social in nature and constitutes a serious departure from that basic principle of compensation for injury from hazards incident to the nature of the work. It casts upon industry alone a

burden which should be more properly borne by society as a whole and the degree of this burden is amply illustrated by the alarming increase in the sums paid out for disabilities relating to the back as indicated above.

This Company accordingly submits most forcibly that provision should be made in the Act to show clearly that in order to receive an award for back disability suffered by a workman, there must be a direct causal relationship to an event occurring at work of a sufficient degree of severity that there can be no doubt that the disablement resulted from it.

It is submitted in addition that where a disability arises in part due to such an occurrence at work, and in part due to causes other than employment, or where the injury aggravates, accelerates or activates an existing condition, any compensation allowed should be only that attributable to the injury sustained. In this connection this Company observes that this concept is included in The Workmen's Compensation Act of British Columbia (section 7 subsection (5)) and in that of Nova Scotia and, to a lesser extent, in those of Alberta, Manitoba and New Brunswick.

While this Company would welcome an exhaustive investigation of back disabilities and the compensation outlaid therefor including the basis upon which compensation has been paid for such cases over the course of years, it must repeat that at present the compensation being paid for these

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disabilities results in a cost to industry that is far beyond industry's proper contribution.

10. Payment of Partial Disability Compensation During Employment

It was an original and basic concept of the Act that an injured employee or his family would not suffer financial loss beyond the share that the employee would be expected to contribute.

Experience has shown that in many cases employees are in receipt of permanent partial disability compensation when in fact without such compensation they would be suffering no financial loss.

It is respectfully submitted that section 25 of the Act should be amended to permit the employer in a case where compensation is payable out of the accident fund to require a review of the nature and degree of an injury particularly in the light of the average weekly earnings that the employee is earning or able to earn in a suitable occupation and the average weekly earnings he would be earning in the job at which he was engaged before the accident.

11. Summation and Conclusion

This Company wishes to repeat that, in its opinion, The Workmen's Compensation Act of Ontario has been of inestimable value to both employees and employers in the

Province. It wishes to emphasize, however, that any amendments which would have the effect of casting upon the classes of industries as constituted at that time financial burden resulting from accidents in past years, or which would increase the amount of compensation payable, as compared with the income available to the employee had he not been injured, to a point beyond proper insurance practice, would be unsound and detrimental to the interest and welfare of Ontario industry and in the case of the latter type of amendment would severely jeopardize the recently developed rehabilitation procedures which in fact require positive assistance if they are to be fully effective.

The Company wishes to draw particular attention to the alarming increase in disabilities to the back which in its opinion is not attributable to industry, and points to the urgent need of amendment to The Workmen's Compensation Act to remove the unjustifiable burden placed on industry by the payment of compensation where disability is not truly connected with employment.

The Company believes that The Workmen's Compensation Act should not as a result of political pressure or expedience be confused with or distorted into that type of legislation which may be required from time to time for the relief of persons who may suffer through disablement from causes not attributable to their work or by reason of the increased cost

of living, for the relief of indigents, or for old age pensions, mother's allowance and similar charitable or social purposes.

All of which is respectfully submitted.

THE INTERNATIONAL NICKEL
COMPANY OF CANADA, LIMITED

September 23,
1966

